

1 A bill to be entitled

2 An act relating to the Anti-Phishing Act of 2006; creating
3 pt. IV of ch. 668, F.S.; providing a title; providing
4 definitions; prohibiting the fraudulent use of a web page
5 or Internet domain name to obtain personal identifying
6 information from a resident of Florida; prohibiting the
7 fraudulent use of electronic mail to obtain personal
8 identifying information from a resident of Florida;
9 providing a civil action for injunction and damages;
10 authorizing an award of triple damages in certain cases;
11 providing for an award of attorneys' fees to a prevailing
12 plaintiff; providing for personal jurisdiction over a
13 violator; providing venue for a civil action; providing
14 for deposit of moneys received by the Attorney General in
15 an action under this act into the Legal Affairs Revolving
16 Trust Fund; providing rulemaking authority; providing an
17 exemption; providing an effective date.

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19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. Part IV of chapter 668, Florida Statutes,
22 consisting of sections 668.6076, 668.6077, 668.6078, 668.6079
23 and 668.6080, is created to read:

24 668.6076 Short Title.--This part may be known by the
25 popular name of the "Anti-Phishing Act of 2006."

26 668.6077 Definitions.--As used in this part the term:

27 (1) "Department" means the Department of Legal Affairs.

28 (2) "Electronic mail address" shall have the definition
29 provided by s. 668.602(6).

30 (3) "Electronic mail message" shall have the definition
31 provided by s. 668.602(7).

32 (4) "Identifying information" shall have the definition
33 provided by s. 817.568(1)(f).

34 (5) "Internet domain name" shall have the definition
35 provided by s. 668.602(10).

36 (6) "Web page" means a location that has a single uniform
37 resource locator (URL) with respect to the world wide web or
38 another location that can be accessed on the Internet.

39 668.6078 Prohibited Acts.--

40 (1) No person may, with the intent to engage in conduct
41 involving the fraudulent use or possession of another person's
42 identifying information:

43 (a) Represent oneself, either directly or by implication
44 to be another person, without the authority or approval of such
45 other person, through the use of a web page or Internet domain
46 name; and

47 (b) Use that web page, Internet domain name, or a link to
48 the web page, that domain name, or another site on the Internet
49 to induce, request, or solicit a resident of this state to
50 provide identifying information.

51 (2) No person may, with the intent to engage in conduct
52 involving the fraudulent use or possession of identifying
53 information, send or cause to be sent to an electronic mail
54 address held by a resident of this state an electronic mail
55 message that:

56 (a) Is falsely represented as being sent by another
57 person, without the authority or approval of such other person;

58 (b) Refers or links the recipient of the message to a web

59 page; and

60 (c) Directly or indirectly induces, requests, or solicits
61 the recipient of the electronic mail message to provide
62 identifying information.

63 668.6079 Remedies.--

64 (1) The following persons may bring a civil action against
65 a person who violates this part:

66 (a) A person engaged in the business of providing Internet
67 access service to the public who is adversely affected by the
68 violation;

69 (b) A financial institution as defined by s. 655.005(1)(h)
70 that is adversely affected by the violation;

71 (c) An owner of a web page, trademark, or service mark who
72 is adversely affected by the violation; or

73 (d) The attorney general.

74 (2) A person bringing an action under this section may:

75 (a) Seek injunctive relief to restrain the violator
76 from continuing the violation.

77 (b) Recover damages in an amount equal to the greater of:

78 1. Actual damages arising from the violation; or

79 2. \$5,000 for each violation of the same nature.

80 (3) The court may increase an award of actual damages in
81 an action brought under this section to an amount not to exceed
82 three times the actual damages sustained if the court finds that
83 the violations have occurred with a frequency as to constitute a
84 pattern or practice.

85 (4) For purposes of this section, violations are of the
86 same nature if the violations consist of the same course of
87 conduct or action, regardless of the number of times the conduct

88 or act occurred.

89 (5) A plaintiff who prevails in an action filed under this
90 section is entitled to recover reasonable attorney's fees and
91 court costs.

92 (6) By committing a violation under this part, the
93 violation submits personally to the jurisdiction of the courts of
94 this state. This section does not preclude other methods of
95 obtaining jurisdiction over a violator of this part.

96 (7) An action under this part may be brought in any court
97 of competent jurisdiction to enforce such rights and to recover
98 damages as stated in this part.

99 (8) The venue for a civil action brought under this
100 subsection shall be the county in which the plaintiff resides or
101 in any county in which any part of the alleged violation of this
102 part took place, regardless of whether the defendant was ever
103 actually present in that county. A civil action filed under
104 this section must be brought within 3 years after the violation
105 occurred.

106 (9) The remedies available in this part are in addition to
107 remedies otherwise available for the same conduct under federal
108 or state law.

109 (10) Any moneys received by the attorney general for
110 attorney's fees and costs of investigation or litigation in
111 proceedings brought under this part shall be deposited as
112 received in the Legal Affairs Revolving Trust Fund.

113 (11) Any moneys received by the attorney general and
114 neither received for attorney's fees and costs of investigation
115 or litigation nor used to reimburse persons found under this law
116 to be damaged, shall accrue to the state and be deposited as

117 received in the Legal Affairs Revolving Trust Fund.

118 (12) The Department of Legal Affairs may adopt rules
119 pursuant to ss. 120.536(1) and 120.54 to implement the
120 provisions of this part.

121 668.6080 Exemption.--This part does not apply to a
122 telecommunications provider's or Internet service provider's
123 good faith transmission or routing of, or intermediate temporary
124 storing or caching of, identifying information.

125 Section 2. This act shall take effect on October 1, 2006.